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No. 712

In the Supreme Court of the United States

October Term, 1965

VELSICOL CHEMICAL CORPORATION, a corporation,
Petitioner,

vs.

GOLDEN GATE HOP RANCH, INC., a corporation,
Respondent

Brief of Respondent to Petition for a Writ of Certiorari to the Supreme Court of the State of Washington

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INDEX

	Page
ANSWER TO PETITIONER'S ARGUMENT	17
ARGUMENT IN OPPOSITION TO ISSUANCE OF WRIT	11
ARGUMENT IN SUPPORT OF JUDGMENT	24
COUNTERSTATEMENT OF FACTS	1

TABLE OF CASES

Aftanse vs. Economy Baler Co., 343 F. (2d) 187 (1965) 20, 24

Buckley vs. The New York Times Co., 338 F. (2d) 470 (5th Cir. 1964) 19

Chovan vs. E. I. DuPont de Nemours & Co., 217 F. Supp. 808 (E. D. Mich. 1963) 18

Erie R. Co. vs. Tompkins, 304 U. S. 64 20

Golden Gate Hop Ranch, Inc. vs. Velsicol Chemical Corporation, 66 W. D.(2d) 455, 403 P.(2d) 351 11

Gray vs. American Radiator and Standard Sanitary Corp., 22 Ill. (2d) 432, 176 N. E. (2d) 761 (1961) 17, 18, 20

Hanson vs. Denckla, 357 U. S. 235 ..... 20, 21, 24

Hellriegel vs. Sears, Roebuck & Co., 157 F. Supp. 718 (N. D. Ill. 1957) 17, 18

Insull vs. New York World-Telegram Corporation, 273 F. (2d) 166 (7th Cir. 1959) cert. denied, 362 U.S. 942 19

International Shoe Co. vs. Washington, 22 Wn. (2d) 146, 154 P. (2d) 801, 326 U.S. 310 ..... 12, 15, 20, 24

Longines Wittnauer Watch Co. vs. Barnes & Reinecke, Inc., 209 N.E. (2d) 68 (N.E. 1965) (actually *Feathers vs. McLucas*) 18

McGee vs. International Life Insurance Company, 355 U. S. 220 ..... 21, 24

Page

McMahon vs. Boeing Airplane Co., 199 F. Supp. 908 (N.D. Ill. 1961) 17, 18, 20

Nixon vs. Cohn, 62 Wn. (2d) 987, 385 P. (2d) 305 ..... 11, 15, 16, 20

Perkins vs. Benquet Consol. Mining Co. 342 U.S. 437 ..... 21, 24

Regie National des Usines Renault vs. Superior Court, 208 Cal. App. (2d) 702, 25 Cal. Rpts. 530 (1964) 17

Roy vs. North American Newspaper Alliance, 205 A. (2d) 844 (N. H. 1964) 19

Travelers Health Ass'n vs. Virginia, 339 U.S. 643 21

Velandra vs. Regie National des Usines Renault, 336 F. (2d) 292 (6th Cir. 1964) 17, 18

STATUTES

7 U.S.C.A. § 135 2

21 U.S.C. § 346 a-b 7

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COUNTERSTATEMENT OF FACTS

We offer the following factual summary as correcting certain inaccuracies and supplying certain omissions in the statement of the other side which bear materially on the issues presented by the petition.

Petitioner, Velsicol Chemical Corporation, is one of the world's largest manufacturers of chemical insecticides (St. 2298-99). It operates on a national and international level (St. 2298). It holds a basic patent on technical heptachlor which in its primary form is a brown waxy substance and useless as a pesticide (St.

1494, 2252). The utility and thus the commercial value of technical heptachlor can be realized only by formulating the product, i.e., by mixing it with different carriers or spreading agents (St. 1571-1577, Ex. 113).

Under federal law (7 U.S.C.A. § 135) such formulations of heptachlor or any other pesticide may be applied on products to be shipped in interstate commerce, only after the label setting forth the ingredients and the directions for use is approved by the U. S. Department of Agriculture (St. 2302). The U.S.D.A. will approve labels or "register" them only after certain minimal proof is submitted, establishing, *inter alia*, that the product is safe for use on a particular plant and will not cause damage to crops or to soil (U.S.C.A. 7, § 135, St. 2302).

Velsicol competes with other basic chemical manufacturers for the national and world markets (St. 1979). In that regard, Velsicol Chemical Corporation provides as a service to its customers, preliminary testing of formulations upon crops either through its own facilities or by subsidizing tests in agricultural experiment stations around the country, the assembling of information from County Extension Agents, experimental stations, and other sources, forwarding this information to the U. S. Department of Agriculture in Washington, D. C., and steering through this agency its application for approval of a "sample label" (St. 1971-85). When it has obtained "registration" or "label approval" for a certain formulation upon a spe-

cific crop, it is then in a position to go to its customer-formulators, such as Niagara Chemical Corporation, Geigy, Stauffer Chemical Co., California Spray Company, or Miller Products of Portland, Oregon, and say to them, in effect: we have developed a formulation which will control a certain insect on certain crops if applied according to our directions (St. 1503-1528, 1562-72). Further, we have satisfied the U. S. Department of Agriculture that this formulation, so applied, is safe to use and will not damage the soil or crops. Further, if you follow the sample label which we will provide to you and if you will formulate heptachlor according to a formulation manual which we will furnish you, you may safely ship the product in interstate commerce (St. 1503-28, 1562-72). Then in connection with and to enhance sales of its technical heptachlor, Velsicol furnishes to its formulator customers free sample labels, the form of which, as a result of Velsicol's efforts, has been approved by the U. S. Department of Agriculture, together with formulating manuals containing detailed instructions as to how their basic product should be formulated.

To enhance sales of its products into formulations containing heptachlor, Velsicol employed sales representatives (St. 1509-11). These individuals were responsible for traveling in the states making up their territory and doing "missionary work" (St. 15-18). This "missionary" work consisted of contacting the formulators, "provide them with the latest information

we had on label clearances, promotion literature we had, and encourage sales on those crops where we felt we could obtain additional sales on" (St. 1931). One such "missionary" for petitioner was Howard Beaudoin (St. 1924). Mr. Beaudoin's sales territory included Colorado, Montana, British Columbia, Oregon and Washington (St. 1933). His trips into Washington, as well as into other states, was by his own admission for the end purpose of increasing sales (St. 1932). One of the companies in Yakima that he called upon for the purpose of increasing sales was the Crop King Co. (St. 1934). In 1954 and 1955 Mr. Beaudoin throughout his territory was advocating the use of heptachlor to control strawberry root weevil (St. 1943). The control of this pest by use of heptachlor in the Yakima Valley was promoted by Beaudoin principally in conjunction with potatoes, cane fruits and alfalfa (St. 1935) although actually the labels bore no restrictions or warning as to possible dangers to other crops.

In the spring of 1955 infestation of hop yards by strawberry root weevil throughout the Yakima Valley had precipitated an informal meeting of hop growers who gathered at the Albert Gamache ranch near Toppenish, Washington, where John Keene, the County Extension Agent, and others identified the insect (St. 2122-23). Inquiry was directed to Dr. Klostermeyer, an entomologist, at the nearby Prosser Experimental Station. He in turn made inquiry to the experimental stations on the Western coast of Washington (which

had experimented with heptachlor on berry plants pursuant to subsidy by the appellant, Velsicol Chemical Corporation) (St. 1975-78). From his discussion with this source, a statement by Dr. Klostermeyer and Mr. Keene, the Extension Agent, was published and promulgated by a voluntary organization of the hop growers known as Hop Growers of Washington which suggested that the strawberry root weevil might be controlled by certain applications of heptachlor but which publication likewise contained in clear language a warning to the effect that there was no prior experience for the use of heptachlor on hops (St. 2101, Ex. 24, 105). This publication was called E.M. 21.

On one of his regular "missionary" trips into Yakima in the spring of 1955, Howard Beaudoin secured a copy of this bulletin (known as E.M. 21) and forwarded the same to his superior in Chicago, Mr. Bussart (St. 1945-46) (Ex. 118). This, according to Beaudoin, was part of a standard procedure to alert his home office of a possible new area for sales (St. 1947-48). Upon receipt of the telegram and the following bulletin, Bussart did nothing for the time being and simply filed this information away (St. 2311).

Meanwhile Back at the Ranch

Golden Gate Hop Ranch is one of the five largest yards in the Yakima Valley which area, in turn, produces 60% of the United States hop production and approximately 50% of the world's hop supply (St. 68).

Golden Gate Hop Ranch is a California corporation and the wholly owned subsidiary of S. S. Steiner, Inc., one of the largest hop brokers in the world (St. 69). Prior to its application of heptachlor, Golden Gate Hop Ranch had about 248 acres of hops in production (St. 99).

The Yakima manager of Golden Gate Hop Ranch was Mr. Drex Kelley (St. 66). He was assisted by a ranch foreman, namely, Emil Lenseigne. Mr. Kelley's immediate superior was Mr. Stinor Gimbel of New York City (St. 99). Mr. Gimbel was an officer and director of Golden Gate Hop Ranch, Inc. and likewise of S. S. Steiner, Inc., the parent corporation (St. 1670-72). Since taking over the direct supervision of the Yakima ranching operation, Mr. S. Stinor Gimbel had attempted to employ the most scientific production methods (St. 98-99). In connection with this, he established a program under which all applications of fertilizer, insecticides, pesticides, or rodenticides had to be cleared through his office located in New York City, N. Y. (St. 1690-92).

Thus, in early 1956, almost a year after the earlier meeting at Gamache Ranch, when Mr. Kelley realized that his yards in the Yakima Valley were infested with the strawberry root weevil, and after discussing it with his ranch foreman, Mr. Lenseigne, who had suggested the use of heptachlor to control the weevil, Mr. Kelley in turn called Mr. Gimbel in New York City advising him of his intentions in this respect (St. 119-

123). In keeping with the policy, Mr. Gimbel instructed Mr. Kelley to hold up on the application of heptachlor until he had an opportunity to check directly with the manufacturer and determine that they might safely use the product on hops without injury or damage to the hops or hop ground and also to ascertain that it would pose no problems under a recently adopted amendment to the Food, Drug & Cosmetic Act, known as the "Miller Amendment" (21 U.S.C. § 346 a-b) (St. 1656-57, St. 121-22). Thereupon, Mr. Gimbel wrote the following letter (Ex. 119A, St. 1656):

"April 27, 1956

"S. S. Steiner, Inc.
605 Madison Avenue
New York, N. Y.

"The Velsicol Corporation
330 East Grand Avenue
Chicago 11, Illinois

"Attn.: Mr. L. P. Wilks, Director of Research
Re: Heptachlor tolerance on hops

"Gentlemen:

"We understand that you manufacture a chemical called Heptachlor.

"In view of the recent Miller Amendment of the Federal Food, Drug and Cosmetic Act, pertaining to residues of pesticides on raw agricultural commodities, we would like to have your recommendations on the tolerance and use of Heptachlor applied in or on hops. Is there a different tolerance established for soil application as well as foliage application?

"We want to pass this information on to our growers who are in doubt as to whether they can use Heptachlor under the new Federal regulation.

"Thanking you in advance, we are,

Very truly yours,
S. S. Steiner, Inc.
/s/S. Stinor Gimbel

On receipt of this letter and with the only information then in his possession consisting of the telegram and the E.M. 21 bulletin received a year earlier from Mr. Beaudoin out in Yakima, Washington (St. 2310-23), without any knowledge of tests, experiments concerning the use of heptachlor on hops (St. 1997-2003, 2315-23), and with no other effort whatsoever to determine the safety of the use of his product on hops (St. 2323), Bussart wrote the reply letter (Ex. 119B) as follows:

"May 4, 1956

"Mr. S. Stinor Gimbel
S. S. Steiner, Inc.
655 Madison Avenue
New York 21, N. Y.

"Dear Mr. Gimbel:

"Your letter of April 27, 1956 was referred to me for answering since I have been handling our label acceptances.

"We have a release from the hop growers' association of Washington listing two types of application for Heptachlor on hops as follows:

"1—50 lbs of Heptachlor 2½% Dust per acre directed at the base of the plants. This application is made early in June.

"2—Apply 5 lbs of actual heptachlor to the soil before growth starts and disk into the soil.

"These applications would not leave a residue on the harvested part of the plant due to the time of the application.

"The Food and Drug Administration do not require tolerances if the application of heptachlor is made at a time that will not produce a residue. Hence no tolerance for the use of heptachlor on hops is necessary if either of the above recommendations are used. I called the Plant Pest Control Board, Washington, D. C., who register labels, and they confirmed this opinion on tolerances.

"We trust this will give you the necessary information for passing out a release to your growers.

"Sincerely yours,
"Velsicol Chemical Corporation
J. Everett Bussart
Chief Entomologist"

JEB:GC

Immediately thereafter and on the 7th of May, recognizing a vast new sales area for the product, Mr. Bussart undertook to obtain label clearance for the product heptachlor on hops (St. 2310-33, Ex. 114).

Relying upon a letter which closed with the expression of trust that its contents would result in a release to his growers for the use of heptachlor on hops, Mr. Gimbel did exactly that. He called Mr. Kelley and told him that the product was safe for use on hops (St. 123). He did this as a matter of fact by reading Mr. Bussart's letter to Mr. Kelley over the phone (St. 1663). Mr. Kelley then advised Mr. Lenseigne to proceed with the application of heptachlor (St. 123). This was done in accordance with the application recommended by Mr. Bussart in his letter (St. 124) and the product was distributed equally to the 248 acres of hops owned by respondent (St. 125-6).

The result was catastrophic. Little effect was noted

in connection with the 1956 crop. But slowly, insidiously, with the inroads through the root structure that became the hallmark of heptachlor everywhere it was used in the Yakima Valley, destruction of the healthy vigorous hop vines and the sterilization of the soil for growing them had been initiated (St. 128-9). Respondent's crops for the years 1957 through 1959 were virtually eliminated and the effect of the product is visible in the soil today!

ARGUMENT IN OPPOSITION TO ISSUANCE OF WRIT

Even if respondents were to concede that a review of the so-called "long-arm statutes," particularly the sections thereof basing jurisdiction upon the commission of a tortious act, was desirable, which we do not, we submit that the case at bar would provide a poor vehicle for doing so.

Further, if respondents were to acknowledge the disharmony of decision or inconsistency of result which petitioner seeks to portray, and again, we do not, we would urge that the case at bar cannot, on its facts, be employed as a basis for their reconciliation.

The Supreme Court of the State of Washington in keeping with most other jurisdictions aware of modern sales and promotional activities employed by manufacturers engaged in nationwide distribution, and the required adjustment of jurisdictional limitations to meet this development, has committed itself to the rule that given sufficient minimal contacts, and upon weighing the disadvantages and inconveniences to each party in selecting the forum, the place of damage is sufficiently the place of commission of a tortious act upon which to base jurisdiction, without offending traditional notions of fair play and substantial justice. *Nixon v. Cohn*, 62 Wn. (2d) 987, 385 P. (2d) 305; *Golden Gate Hop Ranch, Inc. vs. Velsicol Chemical Corporation*, 66 W. D. (2d) 455, 403 P. (2d) 351. This we

submit is in keeping with the pronouncements of this court and others to which we will refer.

However, we point out as a complete answer to the request for review of this case, that the jurisdiction of the Washington court could have as logically, and as constitutionally, been founded upon the activities of the petitioner within the forum state, as constituting the sufficient "transaction of business" within the requirements of *International Shoe Co. vs. Washington*, 22 Wn. (2d) 146, 154 P. (2d) 801, 326 U. S. 310.

A summary of petitioner's activities and their inevitable link to respondent's use of heptachlor and subsequent damage, keyed to the record, is contained in the following digest:

1. Prior to 1956 Velsicol Corporation sold and promoted formulations of heptachlor throughout the nation, including the state of Washington, and in fact throughout the world, knowing that they were going to be actually applied by remote users (St. 1494-98).

2. From 1953 to 1957, as a part of this program Velsicol Chemical Corporation subsidized Washington State College at Pullman and Washington State Experimental Stations to test heptachlor on various crops for the purpose of developing new markets through the development of new uses for formulations of heptachlor (St. 1975-78).

3. Velsicol Chemical Corporation employed a salesman who travelled into Washington, particularly into Yakima County, who did "missionary work" calling

on formulators, distributing sales and formulating information, calling upon County Extension Agents, looking for possible new uses for the product and keeping his superiors advised concerning his activities (St. 3, 1932-39).

4. The salesman's name was Beaudoin and one of the outlets he called upon in Yakima County was a firm known as Crop King Company (St. 1934).

5. From 1953 to 1957 formulations of heptachlor were sold in Washington for use on various crops for the control of strawberry root weevil. One source of supply was accomplished by appellant Velsicol selling heptachlor to Miller Products Company, an Oregon formulator, which sold to Crop King Company in Yakima, a distributor, which sold to Toppenish Hop Growers Supply, a retailer (St. 45-46).

6. County Extension Agent Keene and Dr. Klostermeyer in 1955 received inquiries from hop growers concerning the control of strawberry root weevil on hops (St. 2097).

7. In response thereto they called on Washington State College at Pullman and experimental stations subsidized by Velsicol requesting information (St. 2097, 2126-27).

8. Upon information thus received, they published a bulletin offering recommendations for the use of heptachlor on hops but with a clear warning that there was no history of prior use of heptachlor on hops (St. 2097, Ex. 24, 105).

9. In May of 1955 Beaudoin, Velsicol missionary and salesman, while in Yakima secured this bulletin and sent it to his superior, Mr. Bussart, in Chicago with an accompanying telegram (St. 1944-46).

10. One year later, April 27, 1956, Golden Gate requested from Mr. Bussart advice and instruction as to the use of heptachlor on hops in a letter from Stinor Gimbel to Mr. Bussart, (Ex. 119A).

11. On May 4, 1956, Mr. Bussart answered Mr. Gimbel's inquiry with a recommendation for the use of heptachlor on hops, knowing at the time he wrote it that there was no label clearance for use on hops, no information concerning its safety for use on hops, and withholding from the information which he had lifted from the year-old bulletin, the warning that there was no prior experience for the use of the product on hops (Ex. 119B, St. 2020-34).

12. Stinor Gimbel called Mr. Kelley in Washington in reliance upon Mr. Bussart's assurance and instructed him to use the product on hops.

13. Mr. Kelley's foreman then placed an order for heptachlor which was purchased in Toppenish at Toppenish Hop Growers Supply which had purchased it from Crop King, which had purchased it from Miller Products Company in Oregon, which had purchased it from the Velsicol Chemical Corporation (St. 45-46, 123-125).

14. Mr. Kelley proceeded with the application of the product on hops with the subsequent damage (St. 126).

Not only do we submit that there was a sufficient showing of doing business to meet the "minimum contacts" requirement of *International Shoe, supra,* but the Supreme Court of the State of Washington said as much in its opinion filed as Appendix A to the petition (pages 2a–3a):

> "The act upon which liability in this case was predicated was the writing and mailing of a letter from the Chicago office of the appellant corporation, recommending the use of heptachlor on hops. The letter was sent to an officer of the respondent corporation's parent corporation in New York. The appellant contends that, since this act did not occur in this state, the requirements of the statute were not met.
>
> "However, in the recent case of *Nixon v. Cohn,* 62 Wn. 2d 987, 385 P. 2d 305, we held that, where damages result from negligence of a defendant, the injury occurring in this state is an inseparable part of the 'tortious act,' as that term is used in the statute. Consequently, the respondent brought itself within one of the subdivisions of the act and was entitled to take advantage of its provisions.
>
> "There was also evidence that, while heptachlor in its raw form is not sold in this state, but is sold to manufacturers in other states who combine it with other ingredients to form usable pesticides, which are then sold through distributors in this state, the appellant manufacturer does engage in nation-wide advertising and has sent a representative to this state to do 'missionary' work for the product.
>
> "The company also subsidizes a research laboratory at Washington State College, at Pullman, which conducts tests in the use of the chemical. A strong argument can be made that these activities were sufficient to constitute the transacting of business within this state, as that term is used in

> the statute. However, it is not necessary for us to decide whether the appellant's activities fall within that classification, inasmuch as the fact that the injury occurred in this state was sufficient to bring the case within the "tortious act" classfication. *Nixon v. Cohn, supra.*
>
> "We note also in passing that it appears that the court in Yakima County was the most convenient forum in which to try the issues."

Thus, even if this court were to review jurisdiction based upon the commission of a tortious act within the State of Washington because the fact of damage occurred there, and even if the Court determined that this exceeded constitutional limitations, all that could result would be a referral of the case back to the Supreme Court of the State of Washington for its determination of whether there had been sufficient activities to constitute the transaction of business within the state. From the cited portion of the opinion it is fairly clear as to what the decision of the Washington Supreme Court would be!

ANSWER TO PETITIONER'S ARGUMENT

Petitioner's brief cites several cases which it contends are "replete with confusion, conflict and contradiction" (page 10) and which constitute a "welter of conflicting opinions" (p. 15). Analysis of the cited cases reveals substantially otherwise. At page 10 of its brief petitioner cites *Velandra vs. Regie National des Usines Renault*, 336 F. (2d) 292 (6th Cir. 1964) and *Regie National des Usines Renault vs. Superior Court*, 208 Cal. App. (2d) 702, 25 Cal. Rpts. 530 (1964), as reaching conflicting results "on identical facts" yet the court in *Velandra* distinguished the California case by noting that:

> "While the legal principles there enunciated as distinguished from the factual situation there before the court, may be relevant to a resolution of the legal issues of 'minimum contact' and 'fair play' in this case, under the facts as they appear in the record of this case we are of the opinion that no sufficient showing has been made with reference to sales of the defendant's products within Michigan to establish such minimum contacts within the State as to warrant subjecting the defendants to the personal jurisdiction of a court in Michigan." (336 F. 2d at 297).

Petitioner then (pages 10–11) cites *Gray vs. American Radiator and Standard Sanitary Corp.*, 22 Ill. 2d 432, 176 N.E. 2d 761 (1961); *Hellriegel v. Sears, Roebuck & Co.*, 157 F. Supp. 718 (N.D. Ill. 1957); and *McMahon vs. Boeing Airplane Co.*, 199 F. Supp. 908 (N.D. Ill. 1961), all construing Illinois law, as contributing to the alleged confusion in the law. The only

conflict that exists between these cases is the denial of jurisdiction in *Hellriegel*, a result recognized by the same District Court judge in the *McMahon* case as being no longer controlling. Any conflict that did exist between these cases was resolved by *McMahon*.

Gray, supra, and *Longines Wittnauer Watch Co. vs. Barnes & Reinecke, Inc.*, 209 N.E. 2d 68 (N.E. 1965) (actually *Feathers vs. McLucas*, a consolidated case) admittedly reach opposite results on the issue of whether injury in the forum state supports jurisdiction. This is not, however, the result of differing views of the pertinent constitutional limitations. The New York court was concerned solely with a problem of statutory interpretation, whether its local long arm statute provided for the imposition of jurisdiction in such an event. The court simply held that it did not, and the question of due process was never reached.

Velandra vs. Regie National des Usines Renault, supra, and *Chovan vs. E. I. DuPont de Nemours & Co.*, 217 F. Supp. 808 (E. D. Mich. 1963) may be to some extent in conflict but *Chovan* involved blasting caps and fuses, and the *Velandra* court recognized that "the nature of the product may well have a bearing upon the issue of minimum contact, with a lesser volume of inherently dangerous products constituting a more significant contact with the state than would a larger volume of products offering little or no hazard to the inhabitants of the state." (336 F. 2d at 298). Neither case has any applicability to the case at bar, however,

for neither even mentioned the tort aspect of the applicable long arm statute. Whatever relevancy petitioner finds in these cases to the question of jurisdiction imposed solely because of injury in the forum state, completely escapes us.

The newspaper libel cases (Pet. Br. p. 12), *Roy vs. North American Newspaper Alliance*, 205 A. (2d) 844 (N.H. 1964); *Insull vs. New York World Telegram Corporation*, 273 F. (2d) 166 (7th Cir. 1959), cert. denied, 362 U. S. 942; and *Buckley vs. The New York Times Co.*, 338 F. (2d) 470 (5th Cir. 1964), are easily reconciled, as each turned on the amount of business contacts found to exist in the particular case. Only *Insull* even mentioned the tort section of the applicable long arm statute, and this was held to be inapplicable in light of the Illinois single publication rule that renders the tort of libel absolutely complete at the time of the first publication of the defamatory article, an event that took place outside of the State of Illinois.

The "significant conflict" in cases related to the case at bar (paraphrase petitioner's brief, p. 15) between the Washington Supreme Court and the U. S. District Court for the Eastern District of Washington where similar cases were dismissed, contrary to petitioner's assertion, occurred only because the motion to quash was ruled upon by the District Court before respondent had completed its discovery and had learned of the scope of petitioner's activities within this state. Moreover the Eastern District Court's memorandum was

written prior to the Illinois case of *Gray vs. American Radiator and S. S. Corp.*, 22 Ill. (2d) 342, 176 N. E. (2d) 761 (1961), which was adopted by the Washington State Supreme Court in the case of *Nixon vs. Cohn, supra.* That the District Court would rule otherwise were these cases presented to it today, would appear to be required by *Erie R. Co. vs. Tompkins*, 304 U. S. 64. See, e. g. *McMahon vs. Boeing Airplane Co.*, 199 F. Supp. 908 (N.D. Ill. 1961).

The state and federal court cases involving Minnesota law admittedly are in conflict on the question of injury alone being a sufficient contact to support jurisdiction. The state cases are unanimous in holding that such meets the *International Shoe* test, but the District Court cases are not. It should be noted, however, that this precise question has yet to be determined by the Eighth Circuit Court of Appeals, whose sole decision to date is *Aftanse vs. Economy Baler Co.*, 343 F. (2d) 187 (1965) which is perhaps one of the best reasoned cases in this field. There, although the tort injury theory was applicable, it was coupled with substantial business contacts of the foreign corporation to the forum state, and the case turned on the basis of the contacts found to exist.

Turning again to petitioner's argument, we must take issue with its analysis of cited authority. Petitioner errs, for instance, in its statement on page 9 of its brief that *Hanson vs. Denckla*, 357 U. S. 235, requires that

> ". . . the cause of action must at least arise out of '. . . an act done or transaction consummated in the forum state.' "

This is not only unwarranted but creates a misleading inference due to its being lifted out of context. The full quote is as follows:

> "The cause of action in this case is not one that arises out of an act done or transaction consummated in the forum state. In that respect, it differs from *McGee v. International Life Ins. Co.*, 355 U.S. 220, 78 S. Ct. 199, 201, 2 L. Ed. (2d) 223, and the cases there cited." (357 U. S. at 251).

That *Hanson* did not decide that the cause of action must arise out of an act done or transaction consummated in the forum state is clear from the full text of the quote. Further, that the cause of action need *not* arise out of an act done or transaction consummated in a forum state is the clear holding of this court in *Perkins vs. Benquet Consol. Mining Co.*, 342 U. S. 437, and *Travelers Health Ass'n vs. Virginia*, 339 U. S. 643.

Petitioner then seeks sympathy for its position by stating:

> "This trend (expansion of in personam jurisdiction over non-residents) has reached such proportions that no local manufacturer, however small, can manufacture in one state with any degree of assurance that whether he has or has not placed his goods in the stream of interstate commerce, he may not be called upon to respond in the courts of some distant jurisdiction to which his goods may have found their way." (Pet. Br. p. 9).

As applied to the instant case, this statement has no validity whatsoever. First, petitioner is not a small

local manufacture, but one of the world's largest manufacturers of chemical insecticides and operates on a national and international level (St. 2298-99).

Next, the inference that Washington was an unforeseeable forum (". . . in some jurisdiction") also is without merit. The correspondence between petitioner and respondent (Pet. Br. p. 12A and pp. 5A-6A) made it abundantly clear to petitioner that the respondent desired to distribute the requested information to its hop growers. Respondent is one of the largest brokers of hops in the world (St. 69). The State of Washington (Yakima Valley therein) produces approximately sixty per cent of all hops grown in the United States and approximately fifty per cent of the world's supply (St. 68). Petitioner's chief entomologist, Mr. Bussart, as a result of respondent's letter to him, admittedly recognized a vast new sales area for the Velsicol product, heptachlor, through its potential use on hops (St. 2336). The information Mr. Bussart gave to Mr. Gimbel had been sent to him the year before from the State of Washington. It had been sent to him by one of his sales representatives who was in Yakima, Washington for the very purpose of distributing Velsicol literature and brochures and to alert his Chicago office to new sales areas within the state (St. 2310-33). Further, petitioner's said "missionary" representative, Mr. Beaudoin, on his trips into the State of Washington, contacted formulators and growers and experimental stations in that state for the purpose of increasing

sales of Velsicol products there (St. 1931-43). To suggest that petitioner could not foresee its goods flowing into the State of Washington for use on hops is to ignore the obvious. Nor can we understand in light of these facts, how the decision can be cited as an example of forum shopping!

ARGUMENT IN SUPPORT OF JUDGMENT

Petitioner asserts a need for clarification in an area where the guidelines are quite clear. The decisions of this court from *International Shoe Co. vs. Washington*, 326 U. S. 310, through *McGee vs. International Life Insurance Company*, 355 U. S. 220, and *Hanson vs. Denckla*, 357 U. S. 235, contain the following criteria to be employed in determining if jurisdiction is properly founded:

1. The quantity of the contacts,
2. The nature and quality of the contacts,
3. The source and connection of the cause of action with those contacts,
4. The interest of the forum state,
5. The convenience of the forum to the parties.

With those standards in mind this Court stated in *Perkins vs. Benquet Consol. Mining Co.*, 342 U. S. 437 at page 445, that each case is to be resolved in the light of its own facts.

If the Court will review the digest, *supra*, of petitioner's activities in the State of Washington it will note the presence of every factor listed by its decisions to date. It will readily appear that jurisdiction was imposed by the Washington court on a far broader basis than the "sole" fact of injury occurring within that state.

It would be difficult to find a decision closer on its facts than *Aftanse, supra*, and we feel that a quotation from that case is an appropriate summary of our position:

"We also think it is fair to say that these five Supreme Court cases establish only general and not precise guidelines. Perhaps they purposely do no more than this . . . We observe, . . . that at one time or another in the opinions, three primary factors, namely, the quantity of the contacts, the nature and quality of the contacts, and the source and connection of the cause of action with those contacts, are stressed, and that two others, interest of the forum state and convenience, receive mention.

". . . The Supreme Court has certainly not indicated that all five of these factors must be present in substantial degree for jurisdiction to be constitutionally effected . . .

"We here have more than the minimum contacts which the Supreme Court has prescribed as the standard . . ." (343 F. [2d] 197).

We submit in conclusion that the standards prescribed by this Court and the authorities cited are not only constitutionally sound, but abundantly clear. Whatever problems attend their application involve the familiar difficulties which trial courts face from day to day in the application of legal principles to factual differences. It is appropriate, however, to remind ourselves from time to time that that is the traditional responsibility of trial courts. Any other system will only serve to make this tribunal the arbiter of a never-

ending flow of factual determination. To the end of avoiding such an impractical task we respectfully submit that the petition should be denied.

Respectfully submitted,

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